

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

EDUARDO PACHECO,

Defendant

No. CR 11-0154 MMC

**ORDER SETTING BRIEFING  
SCHEDULE ON DEFENDANT'S  
MOTION TO VACATE, SET ASIDE OR  
CORRECT SENTENCE**

Before the Court is defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody," filed July 31, 2012.

In his motion, defendant alleges that his conviction, obtained by plea of guilty, should be vacated on the ground that he received ineffective assistance of counsel. In support of such allegation, defendant asserts (1) his trial counsel told him that by "signing the paperwork," defendant would be pleading guilty to Counts 1 and 3, but not Count 2, whereas "it turned out that [defendant] had plead[ed] guilty to all three counts," (2) his trial counsel "did not explain to [him] the nature of the discovery," and (3) in response to a request by defendant's family that said trial counsel file a notice of appeal, trial counsel stated "he did not think there were any non-frivolous grounds on which to appeal," and no appeal was filed. (See Mot. at 5.)

//

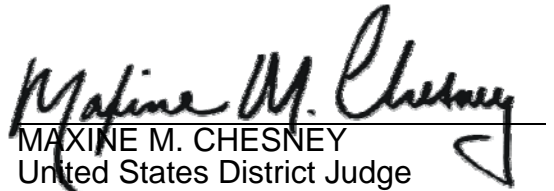
1 “Unless the motion and the files and records of the case conclusively show that the  
2 prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the  
3 United States attorney . . . .” 28 U.S.C. § 2255(b). Here, neither the motion nor the case  
4 record on file conclusively demonstrates defendant is entitled to no relief based on his  
5 claim of ineffective assistance.

6 Accordingly, the Court sets the following briefing schedule:

- 7 1. No later than October 5, 2012, the government shall file its response to the  
8 motion.  
9 2. No later than November 2, 2012, defendant shall file any reply.  
10 3. As of November 2, 2012, the Court will take the matter under submission.

11 **IT IS SO ORDERED.**

12  
13 Dated: September 5, 2012

  
MAXINE M. CHESNEY  
United States District Judge